



In The
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-1710

**RANKIN COUNTY BOARD OF
EDUCATION, ET AL.,**
Petitioners,

vs.

KENNETH W. ADAMS, ET AL.,
Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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TABLE OF CONTENTS

Opinions Below	1
Jurisdiction	2
Federal Statutes Involved	2
Questions Presented	3
Reasons for Granting the Writ—	
I. The Writ of Certiorari Should Be Granted Since the Court of Appeals for the Fifth Circuit Did Not Have Authority to Decide the Back Pay Issue, Since This Issue Was Not Decided by the District Court; and Determina- tion Thereof Was Specifically Reserved by the District Court	5
II. The Writ of Certiorari Should Be Granted Since Neither the Court of Appeals nor the District Court Had Jurisdiction Over the Rankin County Board of Education to Order Said Board to Pay Back Pay, Since This Action Was Commenced and Prosecuted Under the Sole Authority of 42 U.S.C. §1983; and the Board (Rankin County School Dis- trict) Is Not a "Person" Within the Meaning of This Section	7
III. The Writ of Certiorari Should Be Granted Since the Rankin County Board of Education (Rankin County School District) Is an Agency of the State of Mississippi and Therefore Is Immune From This Action for Back Pay Under the Sovereign Immunity Doctrine, As Reaffirmed in <i>Hans v. Louisiana</i> , 134 U.S. 1, and <i>Edelman v. Jordan</i> , 415 U.S. 651	9
Conclusion	13

II

Appendix "A"—Opinion, United States Court of Appeals for the Fifth Circuit	A1
Appendix "B"—Order, United States District Court, Southern District of Mississippi	A3
Appendix "C"—Order Denying Petition for Rehearing, United States Court of Appeals for the Fifth Circuit	A4

Table of Authorities

CASES

<i>Adams County v. State Educational Finance Comm.</i> , 91 So.2d 524, 229 Miss. 566	12
<i>Adkins v. Duval County School District</i> , 511 F.2d 690	7
<i>City of Kenosha v. Brunc</i> , 412 U.S. 507	7
<i>County of Lincoln v. Luning</i> , 133 U.S. 529	13
<i>Edelman v. Jordan</i> , 415 U.S. 651	3, 8, 9, 13
<i>Ex Parte Young</i> , 209 U.S. 123	8
<i>Hagood v. Southern</i> , 117 U.S. 52	7
<i>Hander v. San Jacinto Junior College</i> , 519 F.2d 273	6, 11, 12
<i>Hans v. Louisiana</i> , 134 U.S. 1	3, 9
<i>Harrell v. City of Jackson</i> , 92 So.2d 240, 225 Miss. 815	12, 13
<i>Louisiana v. Jumel</i> , 107 U.S. 711	8
<i>Louisiana Land & Exploration Co. v. State Mineral Board</i> , 229 F.2d 5	9
<i>Monroe v. Pape</i> , 365 U.S. 167	7
<i>Moor v. County of Alameda</i> , 411 U.S. 693	13
<i>Mt. Healthy City Sch. Dist. Bd. of Education v. Doyle</i> , (No. 75-1278) 44 U.S.L.W. 3585	13-14

III

<i>Sheedy v. State</i> , 118 So. 372, 152 Miss. 82	12
<i>Singleton v. Jackson Municipal Separate School District</i> , 419 F.2d 1211	4
<i>Sterzing v. Fort Bent Indep. Sch. Dist.</i> , 496 F.2d 92	7
<i>Tardan v. Chevron Oil Co.</i> , 463 F.2d 651	10

STATUTES

Miss. Code Ann. (1972)—

§37-7-3	10
§§37-11-1, et seq.	10
§§37-13-1, et seq.	10
§§37-15-1, et seq.	10
§§37-17-1, et seq.	10
§§37-19-1, et seq.	11
§§37-23-1, et seq.	11
§§37-37-1, et seq.	10
§§37-39-1, et seq.	10
§§37-41-1, et seq.	11
§§37-43-1, et seq.	11
§§37-47-1, et seq.	11
§§37-61-1, et seq.	10
28 U.S.C. §1254(1)	2
28 U.S.C. §1331	13
28 U.S.C. §1343	2, 3
42 U.S.C. §1983	2, 3, 7, 8, 9, 13

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**PETITION FOR WRIT OF CERTIORARI
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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above mentioned cause December 1, 1975.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 524 F.2d 928 and attached as App. "A". The Order of the United States District Court dated February 3, 1975 has not been officially reported and is attached as App. "B". The order of the Circuit Court denying the Petition for Re-hearing dated March 3, 1976 is attached as App. "C".

JURISDICTION

The judgment of the Court of Appeals was entered on December 1, 1975. A Petition for Rehearing was denied on March 3, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). This Petition for Writ of Certiorari is being filed within ninety days of the denial of the Petition for Rehearing.

FEDERAL STATUTES INVOLVED

42 U.S.C. Section 1983

Sec. 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. Section 1343 (3)

Sec. 1343 (3). Civil rights and elective franchise

The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

QUESTIONS PRESENTED

I

Whether the Court of Appeals had jurisdiction to decide the back pay issue since this issue was not decided by the district court and determination thereof was specifically reserved by the district court.

II

Whether the Court of Appeals had jurisdiction over the Rankin County Board of Education (Rankin County School District) to order said Board to pay back pay since this action was commenced and prosecuted under 42 U.S.C. 1983 and the Board is not a "person" within the meaning of this section.

III

Whether the Rankin County Board of Education (Rankin County School District), an agency and arm of the State, is immune from an award of back pay against it under the sovereign immunity doctrine of the common law as reaffirmed in *Hans v. Louisiana*, 134 U.S. 1, and *Edelman v. Jordan*, 415 U.S. 651.

STATEMENT OF THE CASE

This action was filed by private plaintiffs in August of 1967 naming as defendants the Rankin County Board of Education and its members in their official capacities, alleging that the said Board was operating the Rankin County School District in a discriminatory manner. Jurisdiction of this action was based solely upon 42 U.S.C. §1983 and 28 U.S.C. §1343 (3). The District Court, on December 31, 1969, ordered the school board to desegregate faculty and staff in accor-

dance with the opinion of the Court of Appeals for the Fifth Circuit in *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211. By a report dated July 10, 1974, the District Court made findings of fact in respect to certain faculty and staff members who had raised a claim of racial discrimination in employment. The District Court ruled favorably on the claims for reinstatement of thirteen faculty and staff members and approved a stipulation entered into by the parties, resolving the reinstatement claims of twenty additional faculty and staff members.

In a report to the Court of Appeals for the Fifth Circuit dated December 23, 1974, the District Court made findings of fact that certain teachers who had requested reinstatement were properly not reemployed by the defendant school district and therefore did not grant any relief to these individuals.

By order dated February 3, 1975, the District Court adopted as a final judgment in accordance with the Federal Rules of Civil Procedure, its reports of July 10, 1974, and December 23, 1974.

Said order of February 3, 1975, Appendix "B", contains the following proviso:

"The District Court, as part of its final order, reserves ruling on the question of whether the Eleventh Amendment to the United States Constitution [sovereign immunity] precludes either an award of back pay by this Court or this Court's approval of the stipulation entered into by and between the parties."

Plaintiffs appealed from this order of the District Court.

The Court of Appeals for the Fifth Circuit affirmed the District Court as to its findings of fact that certain teachers had not been discriminated against. But at the same time the Court of Appeals decided, without briefing or a determination by the District Court, that the *Rankin County School District* was liable for back pay to those teachers who were reinstated. This was the issue reserved by the District Court in its February 3, 1975, order.

Defendants filed a Petition for Rehearing and said Petition was denied by the Court of Appeals on March 3, 1976.

REASONS FOR GRANTING THE WRIT

I. The Writ of Certiorari Should Be Granted Since the Court of Appeals for the Fifth Circuit Did Not Have Authority to Decide the Back Pay Issue, Since This Issue Was Not Decided by the District Court; and Determination Thereof Was Specifically Reserved by the District Court.

As reflected by the District Court's order dated February 3, 1975, being Appendix "B" to this petition, the said Court "as part of its final order, reserves ruling on the question of whether the Eleventh Amendment to the United States Constitution [sovereign immunity] precludes either an award of back pay by this Court or this Court's approval of a stipulation which would resolve certain claims for reinstatement with back pay that has been raised in this case." This issue in regard to back pay was never briefed by any of the parties, nor was it argued to the Court. The Court of Appeals for the Fifth Circuit, without the benefit of facts in regard to the Rankin County School District or the law of Mississippi, held that:

"The Rankin County School System is a locally controlled institution which is supported largely by local revenues and accordingly, the Eleventh Amendment does not bar the award of back pay to those teachers who were reinstated since the suit is in reality not against the State itself but against what is primarily a local institution."

In Footnote 4 of the opinion, the Court opined that the county school systems in Mississippi are primarily funded by local ad valorem taxes and that the funds obtained thereby are only supplemented by the State if such funds are insufficient to accomplish the educational needs of the county. As will be shown later in this petition, this is not a true statement of the law of Mississippi. The Court of Appeals relied upon *Hander v. San Jacinto Junior College*, 519 F.2d 273, a case out of Texas wherein the junior college was supported mainly and basically by local funding. Under the laws of the State of Mississippi, the primary funding for county school purposes is furnished by the State, and the local school district may receive some funding from local revenues. Since the Court of Appeals based its finding that the Eleventh Amendment [common-law doctrine of sovereign immunity] was not applicable to the Rankin County School District upon erroneous facts, this in and of itself should be sufficient to reverse the Court of Appeals for the Fifth Circuit and remand to the District Court for a determination of that issue after all parties have had an opportunity to make a record as to those facts which are necessary and essential before such issue may be resolved.

II. The Writ of Certiorari Should Be Granted Since Neither the Court of Appeals nor the District Court Had Jurisdiction Over the Rankin County Board of Education to Order Said Board to Pay Back Pay, Since This Action Was Commenced and Prosecuted Under the Sole Authority of 42 U.S.C. §1983; and the Board (Rankin County School District)¹ Is Not a "Person" Within the Meaning of This Section.

This action was commenced and prosecuted under 42 U.S.C. §1983, which in pertinent part states that:

"Every person . . . who under color of state law . . . subjects or causes any citizen to be deprived of any civil rights . . . is liable for personal injuries."

The Rankin County School District is not a person as contemplated by this section. *Monroe v. Pape*, 365 U.S. 167; *City of Kenosha v. Bruno*, 412 U.S. 507. In fact, the Court of Appeals for the Fifth Circuit has specifically held that a school district is not a person under the purview of 42 U.S.C. §1983. *Adkins v. Duval County School District*, 511 F.2d 690; *Sterzing v. Fort Bent Indep. Sch. Dist.*, 496 F.2d 92. In view of the Court of Appeals' previous holding in this regard, the Petitioners cannot conceive how said Court could now require the school district to reimburse certain teachers for back pay. The Court did not even speak to this question and merely required that the said school district make such reimbursement. Petitioners acknowledge that the school board members in their official capacity were

1. Although the Rankin County School District was not named as a party, both courts treated this case as one against the District and equated the District with the Board of Education, which was so named. We agree that there is no difference, and all monies to pay the awards will come from the School District's funds. *Hagood v. Southern*, 117 U.S. 52.

also parties to the lawsuit, but to require these individuals to pay monies out of the school funds of the school district would be, in effect, nothing more than a suit against such school district, which is not permissible under 42 U.S.C. §1983. As this Court made clear in *Edelman v. Jordan*, 415 U.S. 651, although certain state officials were named as party-defendants in *Edelman*, the funds necessary to satisfy the back-payment judgment would come from State funds and therefore was actually a suit against the State. Using the same reasoning, if the back-pay judgment in the case sub judice is to be paid out of the funds of the Rankin County School District, then in actuality this is a suit against the school district. Petitioners submit that the Court cannot by-pass the specific mandate of 42 U.S.C. §1983 as interpreted by this Court, by the legal fiction of stating that this is a suit against the school board officials and not the school district itself. While the legal fiction created in *Ex Parte Young*, 209 U.S. 123, may sustain the Court's relief in regard to reinstatement of the teachers, such will not sustain a judgment against the funds of the Rankin County School District, which district is not a person and therefore not a party to this action under 42 U.S.C. §1983.²

Petitioners submit that since the award of back pay must of necessity come from school funds belonging to the Rankin County School District, the Court of Appeals

2. In this petition for certiorari, these petitioners are not asserting that the Court did not have authority to order certain affirmative relief, i.e., reinstatement of certain teachers and other school staff. Although such contention is not here made, petitioners are not admitting that such a contention may not be valid in the event the Court should determine that the Rankin County School District is an agency of the State of Mississippi. *Louisiana v. Jumel*, 107 U.S. 711.

for the Fifth Circuit and the District Court are without jurisdiction to require such an award under the provisions of 42 U.S.C. §1983.

III. The Writ of Certiorari Should Be Granted Since the Rankin County Board of Education [Rankin County School District] Is an Agency of the State of Mississippi and Therefore Is Immune From This Action for Back Pay Under the Sovereign Immunity Doctrine, As Reaffirmed in *Hans v. Louisiana*, 134 U.S. 1, and *Edelman v. Jordan*, 415 U.S. 651.

The Rankin County Board of Education [Rankin County School District] is an agency and arm of the State of Mississippi.

The petitioners recognize that the question of immunity in a federal forum is one of federal law, but in deciding such question, the Court is bound by the interpretation placed upon such immunity by the courts of the states involved. The Court of Appeals for the Fifth Circuit in *Louisiana Land & Exploration Co. v. State Mineral Board*, 229 F.2d 5, 7, in addressing the question of whether or not an agency of a state enjoys the immunity of the state, stated that such question must be resolved and "must be determined by the laws of the state." In holding that the State Mineral Board did enjoy such immunity, the Court stated:

"Thus, the fact that the legislature chooses to call it a corporation does not alter the board's characteristics so as to make it something other than what it actually is, a mere agent of the State. Accordingly, it is clear that when the Board sues or is sued, it appears in court as an agent of its principal, the State."

This principle of law was reaffirmed by the same Court in *Tardan v. Chevron Oil Co.*, 463 F.2d 651.

Under Mississippi law, when a school district is created, such creation must be approved by the State Educational Finance Commission. §37-7-3, Miss. Code Ann. (1972). Although the day-to-day operation of a school district is under the supervision of the superintendent of education and a local school board, the legislature, through enactments, has prescribed specific rules and regulations to govern and control the operations of such school districts, e.g., accreditation of schools, *ibid.*, 37-17-1, et seq.; expenditure of funds, *ibid.*, 37-61-1, et seq.; purchases, *ibid.*, 37-39-1, et seq.; accounting and auditing, *ibid.*, 37-37-1, et seq.; records, enrollment and transfers of pupils, *ibid.*, 37-15-1, et seq.; curriculum, school year and attendance, *ibid.*, 37-13-1, et seq.; school district personnel, *ibid.*, 37-9-1, et seq.;³ general provisions pertaining to education, *ibid.*, 37-11-1, et seq. An analysis of these statutes reflects that the everyday operations of the local school districts are strictly and specifically controlled by acts of the Mississippi Legislature and that although the carrying out of such operations is left to local authorities, the paramount authority is the State of Mississippi.

Although the Court of Appeals for the Fifth Circuit held that the school districts of Mississippi were funded primarily by local funds, and the State supplemented such funds only when necessary, this is an incorrect statement and the exact opposite is the true facts. Ap-

3. Detailed procedure is set out for employment and reemployment of teachers, principals and superintendents of a school district. Such includes but is not limited to form of contracts, salaries, terms, conditions, duties, etc. Further, a fair dismissal hearing procedure is provided.

parently, the Court of Appeals for the Fifth Circuit confused the law of the State of Mississippi with certain laws of the State of Texas, which were in regard to the funding of junior colleges in that state.⁴ Under the laws of the State of Mississippi, funds necessary to provide for a minimum education are appropriated out of the State Treasury of the State of Mississippi. *Ibid.*, §§37-19-1, et seq. The law does require that the local district raise certain funds as matching funds, but such is only a small fraction of the funds which come from the State Treasury. The State further provides funds for transportation of pupils, *ibid.*, §§37-41-1, et seq.; state textbooks, *ibid.*, §§37-43-1, et seq.; certain funds for capital improvements, *ibid.*, §§37-47-1, et seq.; and funds for the education of exceptional children, *ibid.*, §§37-23-1, et seq.

To operate the "minimum education program" for the school year 1974-75 throughout the state of Mississippi costs a total of \$220,738,222.00. Of this amount, \$202,915,933.00 or 91.93% was state monies while only \$17,822,289.00 or 8.07% was local (matching) monies. For the same period of time there was approximately another \$18,000,000.00 of state monies distributed under other state funded programs to school districts throughout the state.⁵

These figures, standing alone, belie the Court of Appeals determination that the "county school systems

4. The Court cited as authority *Hander v. San Jacinto Junior College*, 519 F.2d 273, in support of this finding wherein the funding laws of Texas were discussed in detail.

5. The official figures are not at this time available for the school year 1975-76, but the state monies will amount to a greater percent since there was an increase in regard to teacher salaries while no increase in the local matching monies.

in Mississippi are primarily funded by local ad valorem taxes and the funds obtained thereby are only supplemented by the state if insufficient to accomplish the educational needs of the county." p. 928.

Therefore, using the Court of Appeals' own criterion, i.e., funding, under the true facts as they pertain to Mississippi School Districts, that Court should have on the Petition for Rehearing determined that the District was primarily funded by state taxes and only supplemented by local taxes and, because of such funding, merely an agency or arm of the State of Mississippi and not a "local institution" and thereby protected by the doctrine of sovereign immunity.

It is therefore apparent that if the Rankin County School District is required to pay certain teachers back pay, such awards would of necessity come from monies supplied by the State of Mississippi out of the State Treasury from general revenue funds. Such funds are supplied by the State of Mississippi and are earmarked for the maintenance and operation of the school districts. Further, in *Hander*, supra, the Court of Appeals for the Fifth Circuit gave great weight to the decisions of the Supreme Court of Texas, wherein said Supreme Court had held that junior colleges are not agents of the State but are merely local districts and therefore independent entities. The Supreme Court of Mississippi in an unbroken line of cases has held that local school districts are not independent entities but are rather agencies of the State of Mississippi. *Sheedy v. State*, 118 So. 372, 152 Miss. 82; *Adams County v. State Educational Finance Comm.*, 91 So.2d 524, 229 Miss. 566; *Harrell v. City of Jackson*, 92 So.2d 240, 225 Miss. 815.

In *Harrell v. City of Jackson*, supra, the Supreme Court of Mississippi surveyed numerous decisions of that Court and the provisions of the Constitution of Mississippi and its legislative acts, and concluded that:

"Thus, it is clear from the foregoing constitutional and legislative provisions and the adjudicated cases of Mississippi and the general rule elsewhere that the trustees of the Jackson Municipal Separate School District are agents of the State of Mississippi. . . ." 92 So.2d 244.

Since the funds to satisfy the back-pay awards in this case must inevitably come from the general revenues of the State of Mississippi, such is controlled by this Court's decision in *Edelman v. Jordan*, 415 U.S. 651, and not the Court's decision in *Ex Parte Young*, 209 U.S. 123.⁶ Therefore, the courts below had no authority to award back pay against these petitioners.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be issued to review the decision and judgment of the Court of Appeals for the Fifth Circuit.

It is here noted that this Court on April 19, 1976, granted a petition for writ of certiorari in *Mt. Healthy City Sch. Dist. Bd. of Education v. Doyle*, No. 75-

6. The case sub judice is distinguished from *Moor v. County of Alameda*, 411 U.S. 693, and *County of Lincoln v. Luning*, 133 U.S. 529. In these cases, the Court, after sifting the facts, determined that the county was not an arm or agency of the State and in fact was a local independent entity, raising its operational funds from local revenues, and further, that such had been the determination by the highest courts of the States of California and Illinois. Such are not the facts as they pertain to school districts in Mississippi.

1278, wherein the questions presented are (1) Does district court have jurisdiction over this action since *board of education* is not "person" within meaning of 42 U.S.C. §1983, and plaintiff could not properly contemplate \$10,000 as amount in controversy for suit under 28 U.S.C. §1331? (Emphasis added) (2) Is city board of education immune from suit under sovereign immunity protection of Eleventh Amendment [common-law sovereign immunity]? (3) Can board of education be forced to give continuing contract to nontenured teacher it considered too immature for position? 44 U.S.L.W. 3585.

Respectfully submitted,

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APPENDIX "A"

Before BROWN, Chief Judge, MORGAN and GEE,
Circuit Judges.

PER CURIAM:

In conformance with our opinion in *Adams v. Rankin County Board of Education*, 5 Cir., 1973, 485 F.2d 324 which ordered the implementation of a unitary school system in Rankin County, Mississippi, the District Court, upon remand, made a detailed report to the Fifth Circuit on July 10, 1974¹ which was supplemented by a report on December 23, 1974.² By its order entered February 3, 1975³ the District Court adopted these reports as its final judgment and this decree resolved all issues except the following: (i) whether the District Court erred in not reinstating three teachers who were dismissed during the time when the unitary system was being implemented, (ii) whether the District Court erred in not reinstating six non-professional staff members who were dismissed but later reemployed, and (iii) whether those teachers who were reinstated pursuant to the District Court's order upon remand from this Court were entitled to back pay awards against the local school system.

[1] Dealing with these issues seriatim, we find that the District Court had ample basis upon which to conclude that the teachers were properly discharged. There was no showing that the dismissals were the result of racial discrimination, *United States v. Jefferson County*

1. This report is set out in the Appendix on appeal at 62-77.

2. See App. at 84-86.

3. See App. at 112.

Board of Education, 5 Cir., 1967, 380 F.2d 385, 394, and on the contrary there was substantial evidence from which the District Judge could conclude that the teachers were incompetent. See District Court's report to the Fifth Circuit at p. 10, App. at 71.

Concerning the nonprofessional employees, in light of the District Court's finding that all of these employees had been re-employed we deem this issue to be moot.

[2] Finally, relying on our recent decision in *Hander v. San Jacinto Junior College*, 5 Cir., 1975, 519 F.2d 273, 279-80, we find that under the applicable Mississippi statutes the Rankin County School system is a locally controlled institution which is supported largely by local revenues⁴ and accordingly the Eleventh Amendment does not bar the award of back pay to those teachers who were reinstated since the suit is in reality not against the state itself but against what is primarily a local institution. Accordingly, we remand this case to the District Court with the instructions that it calculate and award back pay to those teachers who were reinstated in accordance with the stipulation of the parties concerning this subject which was filed April 12, 1974 and which is set out on pages 40-58 of the appendix on appeal.

Affirmed and remanded with instructions.

4. The county school systems in Mississippi are primarily funded by local ad valorem taxes and the funds obtained thereby are only supplemented by the state if insufficient to accomplish the educational needs of the county. See Miss.Code Ann. § 37-19-15 (1972). In addition, the statutes provide for a flexible tax structure which continues to tap local resources when increases in educational expenses are necessary to accomplish local educational goals. See Miss.Code Ann. § 37-57-1 et seq. (1972). Thus, it is apparent that any award of back pay would come primarily from local funds rather than out of the state treasury.

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 4156(R)

KENNETH W. ADAMS, et al.,
Plaintiffs,

v.

RANKIN COUNTY BOARD OF EDUCATION, et al.,
Defendants.

ORDER

(Filed February 6, 1975)

Upon the motion of the United States, *amicus curiae*, for entry of written judgment with supportive findings and conclusions, this Court has determined that its July 10, 1974 Report, and its Supplemental and Final Report of December 23, 1974, constitute a final written order with supportive findings and conclusions.

NOW THEREFORE IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT this Court's Reports of July 10, 1974 and December 23, 1974, are hereby adopted as a final judgment in accordance with the Federal Rules of Civil Procedure. The Court, as part of its final order, reserves ruling on the question of whether the Eleventh Amendment to the United States Constitution precludes either an award of back pay by this Court or this Court's approval of a stipulation which would resolve certain claims for reinstatement with back pay that have been raised in this case.

A4

The Clerk is directed to file this order and serve a copy on all counsel of record.

Entered this the 3rd day of February, 1975.

/s/ Dan M. Russell, Jr.

United States District Judge

APPENDIX "C"

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 75-1991

KENNETH W. ADAMS, ET AL.,
Plaintiffs-Appellants,

UNITED STATES OF AMERICA,
Amicus Curiae,

versus

RANKIN COUNTY BOARD OF
EDUCATION, ET AL.,
Defendants-Appellees.

Appeal From the United States District Court for
the Southern District of Mississippi

ON PETITION FOR REHEARING

(Filed March 3, 1976)

Before BROWN, Chief Judge, MORGAN and GEE,
Circuit Judges.

PER CURIAM:

A5

IT IS ORDERED that the petition for rehearing filed on behalf of the Rankin County Board of Education, ET AL. in the above entitled and numbered cause be and the same is hereby denied.